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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

ROSELYN BRASWELL, et al.,  
Plaintiffs,  
Vs. CASE NO.: 2:21cv25-ECM  
BOW PLUMBING GROUP, INC.,  
Defendant.

\* \* \* \* \*

STATUS CONFERENCE – FINAL APPROVAL HEARING

\* \* \* \* \*

BEFORE THE HONORABLE EMILY C. MARKS, UNITED STATES DISTRICT  
JUDGE, at Montgomery, Alabama, on Monday, July 29, 2024,  
commencing at 1:30 p.m.

APPEARANCES

FOR THE PLAINTIFFS:	Ms. Callie M. Mendenhall Ms. Malia D. Tartt Mr. Kirby D. Farris Attorneys at Law FARRIS RILEY & PITT 505 20th Street North, Suite 1700 Birmingham, Alabama 35203
FOR THE DEFENDANT:	Ms. Angel A. Croes Ms. Hanna DellaSala Attorneys at Law CARR ALLISON 100 Vestavia Parkway Birmingham, Alabama 35216

1 Proceedings reported stenographically;  
2 transcript produced by computer

3 \* \* \* \* \*

4 (The following proceedings were heard before the Honorable  
5 Emily C. Marks, United States District Judge, at  
6 Montgomery, Alabama, on Monday, July 29, 2024, commencing  
7 at 1:30 p.m.:)

8 THE COURT: Good afternoon. We're here for a fairness  
9 hearing in the case of Braswell, et al. versus Bow Plumbing  
10 Group, Incorporated, case number 21cv25.

11 Who do we have here for the plaintiffs?

12 MS. MENDENHALL: Good afternoon, Your Honor. Callie  
13 Mendenhall, Malia Tarrtt, and Kirby Farris for class counsel.

14 THE COURT: Good afternoon. And who do we have here  
15 for the defendant?

16 MS. CROES: Good afternoon, Your Honor. Angel Croes  
17 and Hanna DellaSala on behalf of Bow Plumbing Group, Inc.

18 THE COURT: All right. Good afternoon.

19 Let me start by saying, I note we have four pending  
20 motions. We have the plaintiffs' motion for final approval of  
21 the class action settlement and to certify the class, which is  
22 document 125. We have the joint motion to amend the proposed  
23 final approval order, which is document 127. We have the joint  
24 motion to supplement the plaintiffs' motion for final approval  
25 with the supplemental declaration from the settlement

1 administrator. And we have the plaintiffs' motion for approval  
2 of class counsels' attorneys' fees and costs, which is  
3 document 100.

4 As to the joint motion to amend the proposed final  
5 approval order, which is document 127, that's a joint motion by  
6 the parties. I've reviewed it. I'm granting that motion.

7 And then the joint motion to supplement the plaintiffs'  
8 motion with the declaration from the settlement administrator,  
9 which is document 128, I'm going to grant that motion as well.

10 So, really, we are going to talk today about document  
11 100 and document 125, the motion for attorneys' fees and the  
12 motion for final approval of the class action.

13 I had ordered the plaintiffs to be prepared to discuss  
14 Rule 23(e)(2). In your submissions to the Court, you focused on  
15 the *Bennett* factors in analyzing the class action, but the  
16 circuit has directed district courts to analyze fairness under  
17 23(e)(2) (A) through (D), and that was not included in your  
18 submissions, so I'd like to hear from you on those four core  
19 concerns in Rule 23(e)(2).

20 MS. MENDENHALL: Yes, Your Honor. Do you have a  
21 preference where I am in responding to you?

22 THE COURT: I do not, as long as you speak into the  
23 microphone and we can hear you.

24 MS. MENDENHALL: Let me go ahead and just move up here.  
25 This is Callie Mendenhall. Okay.

1 THE COURT: Go ahead.

2 MS. MENDENHALL: Judge Marks, after receiving your  
3 order last Friday directing us to focus in on Federal Rule of  
4 Civil Procedure 23(e)(2) Subsections (A) through (D), including  
5 the commentary to that 2018 amendment and also the *Ponzio v.*  
6 *Pinon* case that comes out of the Eleventh Circuit from late  
7 2023, what this new law requires is really a supplementation of  
8 the *Bennett* factors. It doesn't displace it.

9 So what the rule focuses on, before we get into the  
10 substance, are these four core concerns: (A), the class  
11 representatives and class counsel have adequately represented  
12 the class; (B), the proposal was negotiated at arm's length;  
13 (C), the relief provided for the class is adequate, taking into  
14 account -- and then there are four subsections: (i), the costs,  
15 risks, and delay of trial and appeal; the effectiveness of any  
16 proposed method of distributing relief to the class, including  
17 the method of processing class-member claims; (iii), the terms  
18 of any proposed award of attorneys' fees, including timing of  
19 payment; and, (iv), any agreement required to be identified  
20 under Rule 23(e)(3). And the last core concern is (D), the  
21 proposal treats class members equitably relative to each other.

22 Judge, in reading through the commentary, the  
23 commentary denotes -- the commentary really separates (A) and  
24 (B) and (C) and (D) into two categories, (A) and (B) being  
25 procedural core concerns, and (C) and (D) being substantive

1 concerns. The central concern in reviewing the class action  
2 settlement is that it is fair, reasonable, and adequate. And  
3 the goal of the 2018, reading straight from the commentary, is  
4 not to displace any factor, but rather to focus the Court and  
5 the lawyers on these core concerns of procedure and substance  
6 that should guide the decision of whether to approve the  
7 proposal.

8 In light of the *Ponzio* case, that case really focused  
9 on some additional issues in addition to the 2018 commentary.  
10 But what it did do was it looked at the *Bennett* factors and  
11 categorized them -- it took those same factors and categorized  
12 them into whether they fall into that procedural subset or that  
13 substantive subset.

14 *Bennett* factors (1), (2), (4), and (6), which are the  
15 likelihood of success at trial, the range of possible recovery,  
16 the complexity, expense, and duration of litigation, and, six,  
17 the stage of proceedings at which the settlement was achieved,  
18 can inform whether the relief provided to the class is adequate,  
19 which goes directly to core concern three. Additionally,  
20 *Bennett* factors (3) and (5) address core concern four. The  
21 *Bennett* factors (3) and (5) are the point on or below the range  
22 of possible recovery at which a settlement is fair, adequate,  
23 and reasonable, and, (5), the substance and amount of opposition  
24 to the settlement.

25 Your Honor, in reviewing all of those guidelines, as to

1 whether the representatives and class counsel have adequately  
2 represented the class, Your Honor should find that we have. We  
3 filed the class. This case has been pending for three and a  
4 half years. We have engaged in discovery, including at least  
5 one motion to compel that was filed and heard before this Court.  
6 We took party depositions of our class representatives. We also  
7 engaged in a deposition of a corporate representative of Bow.

8           In addition to that, we did deal with the production of  
9 documents that came in. We also engaged in very long and  
10 lengthy home inspections of Roselyn Braswell, Jerri and Gregory  
11 Johnson. And in addition to those two homes, we did look at  
12 three other settlement class members' homes. At those homesites  
13 their homes had sheetrock cut into so that we could all access  
14 the pipe. We had Bow's experts, our experts there to take all  
15 of the analysis that they would need of the pipe in the wall  
16 that they needed to. Then we resected different parts of the  
17 pipe based on what our experts, both sides, had told us.

18           In the middle of that, there were numerous discovery  
19 meet and confers with Bow's counsel to come to agreements on how  
20 much of the home could be destroyed to access the pipe; how much  
21 of the home pipe actually needed to be removed. And then after  
22 all of those site visits, which took well into the evening hours  
23 at each of those homes, the experts then transported the pipe  
24 between their two labs to conduct testing and determine whether  
25 or not there were issues with the pipe.

1           Moreover, Your Honor, this proposal was negotiated at  
2 arm's length. The counsel for both parties engaged a mediator  
3 who did not have any involvement with the case. He's out of  
4 Dallas. He came in and met with us for three long days. We  
5 came up with an agreement in principle at the end of those three  
6 days. Following the three days, there was then weeks and months  
7 in between the time those negotiations finished and the time  
8 that we filed for preliminary approval. That time period was  
9 really spent negotiating and hammering out those finer details  
10 of the settlement agreement to make sure all parties were on  
11 board.

12           The adequacy of the settlement. Your Honor, while the  
13 Bow class litigation is new, there have been some other PEX  
14 manufacturers that have had class actions involved with them.  
15 In running a very simple comparison between them, our settlement  
16 is, in our opinion, even more fair and more adequate than the  
17 other settlements that have been approved by other district  
18 courts.

19           And we know that that's not binding precedent by any  
20 stretch of the imagination on you; however, when you just look  
21 at the percentage of recovery that our class members can receive  
22 versus what the recovery is for those other class members, such  
23 as here in ours somebody that has one or two leaks or -- well,  
24 one plus leaks -- is able to recover an initial payment of 70  
25 percent of what that reimbursement was. So that reimbursement

1 includes, you know, if you've got a leak in your slab and  
2 somebody has to come in and bust up your floors to access the  
3 pipe, that reimbursement of the 70 percent comes in and pays for  
4 the cost to access the pipe, the cost to refinish the floors,  
5 all of that. In the other settlements, if you have one or more  
6 leaks, you received an initial payment of 25 percent, or in  
7 another one it was 40 percent. So the fact that we're starting  
8 off our class members at a 70 percent initial payment is  
9 wonderful compared to the types of recovery that they received  
10 in the others.

11 In addition, Your Honor, after that initial payment is  
12 made for all the class members, to the extent that settlement  
13 funds remain, those class members can receive up to an  
14 additional 10 percent, so that total recovery is 80 percent. In  
15 the other class actions, they would have received up to 70  
16 percent total if class funds remained.

17 In addition, we do offer in our settlement terms the  
18 option, if you have three or more leaks, the option for a full  
19 house replumb. That is being provided at a total expense cost  
20 per the terms of the settlement. If somebody is not confident  
21 in having a plumber that was not of their own choosing come in  
22 and do the replumb themselves, then they can opt for a one-time  
23 cash payment of \$8,500.

24 Your Honor, we calculated that \$8,500 payment based on  
25 the average price of a fixture that would have to be accessed



1 and rerouted throughout the home. And based on some of our  
2 conversations with some settlement class members already, they  
3 have -- if they have independently received a plumber's  
4 estimate, it has been somewhere in the neighborhood of 7,000 to  
5 8,000. So that \$8,500 payment in lieu of having the settlement  
6 pay for -- or have the replum done for you, that \$8,500 payment  
7 is well compensating them to be able to go out and get the  
8 plumber of their choosing.

9           As far as the costs, risks, and delay of trial and  
10 appeal, our firm is kind of in a unique position with regard to  
11 this litigation because we were involved in one of the prior  
12 class cases. It was the *Matson v. NIBCO* case. Kirby Farris was  
13 class counsel in that case. And in addition to being in that  
14 class case, we did have some individual cases that we litigated  
15 here in Alabama outside of the class.

16           The way that those cases worked out were such that the  
17 expenses of those individual litigations almost outweighed any  
18 recovery that those individual plaintiffs had. We really had to  
19 work on those individual settlements to make them work for the  
20 plaintiffs that did not want to be part of the class. And as  
21 Your Honor can see from the motion for costs and fees in this  
22 case, just our costs alone to get where we've gotten in three  
23 and a half years with our experts were over \$400,000. The  
24 amount to litigate these individually just does not make  
25 economic sense for any plaintiff or any law firm. So a class

1 settlement such as this where everybody can participate using  
2 the joint knowledge and expert use that we've already put  
3 together for them is a huge factor in approving this settlement.

4           In addition, Your Honor, even with, you know,  
5 proceeding on your own, as Your Honor knows with jury trials,  
6 there is no guarantee that a jury is going to find in your  
7 favor. Bow has substantial defenses in this case, whether  
8 plaintiffs' counsel likes it or not. Some of Bow's defenses  
9 include installation error, meaning did the plumbers who came in  
10 to put the pipe into people's homes, did they bend it too far?  
11 Did they put it in certain situations where it was going to get  
12 too hot? Things of that nature that would preclude at trial any  
13 jury from finding in favor of a plaintiff. So there were some  
14 risks in moving forward with this. And, again, they did have  
15 their own highly credentialed experts in this case that would  
16 have come and said all of those things to a jury.

17           The next point that I'll address is the effectiveness  
18 of any proposed method of distributing relief to the class,  
19 including the method of processing class members' claims. And  
20 there's another note about them being equitably distributed.

21           And, Your Honor, through the use of Angeion, the class  
22 members don't come to Bow and they don't come to class counsel  
23 asking for recovery. The advocacy is really done in the  
24 settlement agreement that has shifted over to Angeion. So  
25 Angeion is really a blind claims administrator in the terms of

1 who these people are, the geography of where they come from, the  
2 circumstances of the leaks that they have, or any other  
3 identifying factor that may or may not have been in play with --  
4 you know, if the parties had been litigating the case  
5 separately. So Angeion is reviewing these people purely on a  
6 metric that's applied across the board, and the claim form is  
7 the same for every submitting class member. It has the same  
8 information, requires the same level of detail, and it will be  
9 analyzed equitably. The settlements will then be apportioned  
10 equitably based on those percentages that I delineated earlier.

11 One of the other topics is the terms of any proposed  
12 award of attorney's fees, including timing of payment. Judge,  
13 I'm sure when we shift over to the motion for fees, I'll address  
14 that in further detail, but just to give you a highlight, when  
15 we met and mediated with defense counsel, we at that time did  
16 not negotiate class counsel fees. Those were negotiated and  
17 agreed to separately. Same with the costs. Same with the  
18 service awards.

19 When we look at the total common fund, which would be  
20 the 8,025,000, and what we're seeking in class counsel fees,  
21 which is 3,900,000, adding those together, you get 11,925,000.  
22 And out of that, our fee falls in line with what the Eleventh  
23 Circuit dictates is fair and reasonable. It comes to just shy  
24 of 29 percent. So we do think that our attorneys' fee is within  
25 the reasonableness of what Eleventh Circuit dictates as well as

1 the costs and the service awards.

2 Let me make sure I've addressed everything for Your  
3 Honor.

4 The fifth *Bennett* factor, which goes to core concern  
5 four, which would be Subsection (D), that factor is the  
6 substance and amount of opposition to the settlement. Your  
7 Honor, while we do have requests for exclusion, it's important  
8 to note that there are no objections that have been filed.

9 THE COURT: And you're talking about 23(e)(2)(D) here,  
10 that the proposal treats class members equitably relative to  
11 each other?

12 MS. MENDENHALL: Let me make absolutely certain.

13 THE COURT: My review of the *Bennett* factors is  
14 substance and amount of opposition to settlement speaks to  
15 Subsection (D), 23(e)(2)(D).

16 MS. MENDENHALL: Yes, Your Honor.

17 THE COURT: All right.

18 MS. MENDENHALL: Yes. There is no objection pending  
19 before the Court on the final approval of this settlement, and  
20 so we think that that highly signifies the fairness and adequacy  
21 and cause for getting this approved in this court.

22 And, Your Honor, I believe that's all I have on that  
23 subsection that you wanted us to focus on. I'm happy to answer  
24 any other questions that you may have on that subsection.

25 THE COURT: I don't have any questions. I just want to

1 make sure we are clear about the requirements that the Court  
2 analyze the fairness, reasonableness, and adequacy of the  
3 proposed settlement based on those four concerns in 23(e)(2)(A)  
4 through (D) as informed by the *Bennett* factors. I think you've  
5 done that now. You certainly had provided analysis under the  
6 *Bennett* factors. Is there anything else specific to the *Bennett*  
7 factors you want to add, or -- you provided that analysis for  
8 the Court in your motion, but they do inform the Court's  
9 analysis under Rule 23.

10 MS. MENDENHALL: Yes, Your Honor. I have nothing in  
11 addition to what we have addressed as far as the *Bennett* factors  
12 in our pleadings. In the *Ponzio* case and in relation to the  
13 2018 amendment, I believe I have worked through the subsection  
14 requirements. Whether the class representatives and class  
15 counsel adequately represented the class, I believe I have  
16 provided that. Whether the proposal was negotiated at arm's  
17 length, we discussed that with the mediator. Whether the relief  
18 provided for the class is adequate, we worked through that. And  
19 then whether the proposal treats class members equitably  
20 relative to each other. I do note -- it does mention in the  
21 *Ponzio* case the primary procedural considerations and  
22 substantive qualities that should always matter to the decision  
23 whether to approve the proposal is those four concerns. And I  
24 believe that we have adequately addressed those, Your Honor.

25 THE COURT: All right. Does the defendant have

1 anything to add?

2 MS. CROES: Yes, Your Honor. Angel Croes on behalf of  
3 Bow Plumbing Group, Inc.

4 We agree with class counsel's representation to the  
5 Court in discussion of the four core concerns. I would just  
6 like to add for the fourth core concern, (D), whether the  
7 proposal treats class members equitably in relation to each  
8 other. And forgive me if class counsel did speak to this, but I  
9 would just like to add that apart from the service awards  
10 available to class representatives, all class members are  
11 treated equally based upon objective criteria and a uniform  
12 percentage of damages and a recovery structure that applies  
13 equally to every class member.

14 The uniform apportionment of relief takes into account  
15 individual differences and individual damages incurred so that  
16 someone with 70 percent to 80 percent -- excuse me -- someone  
17 with \$100,000 in damages under the uniform recovery structure  
18 will equitably and fairly recover more than someone with \$10,000  
19 in damages. So it is a very clear, very specific formula that  
20 is easy for the settlement administrator to apply to every claim  
21 that comes in, and there is no room for independent judgment or  
22 consideration. The formula is there, it applies to all class  
23 members uniformly, but it does allow for damage recovery based  
24 on the individual damages incurred.

25 THE COURT: All right. Anything else on Rule 23?

1 MS. MENDENHALL: Nothing further, Your Honor.

2 THE COURT: All right. You brought up the incentive  
3 awards. Let's talk about the incentive awards. I am not  
4 convinced that the incentive awards are permissible. I've read  
5 *Johnson vs. NPAS Solutions, LLC*, 975 F.3d 1244. That is a  
6 published opinion from the Eleventh Circuit from September of  
7 2020. In that case -- and you've mentioned it in your briefing.  
8 The Eleventh Circuit held that incentive awards are prohibited.  
9 There have been district court opinions in the Eleventh Circuit  
10 that have opined that that decision is limited to cases  
11 involving a federal question, and that where we are in a  
12 diversity situation -- which we are here under diversity  
13 jurisdiction -- the Erie doctrine requires that we apply the law  
14 of the state, and incentive awards are awardable under Alabama  
15 law.

16 No party and none of those district court opinions  
17 refer at all to a published opinion from the Eleventh Circuit,  
18 *In re Equifax, Incorporated*. That citation is 999 F.3d 1247  
19 from June of 2021, where a panel from a published opinion from  
20 the Eleventh Circuit held that --

21 Well, there the case started off with a federal  
22 question. There were claims under the Fair Credit Reporting  
23 Act. The Court on a motion to dismiss dismissed the federal  
24 claims, certified the class as to only state claims, and the  
25 district court awarded incentive awards and was reversed by the

1 Eleventh Circuit. And there the circuit said that service  
2 awards are prohibited as a matter of law in this circuit, and  
3 noted the *Johnson* case binds us here. There was no mention in  
4 the Court's analysis of diversity versus federal question  
5 jurisdiction, but in that case the class was certified only as  
6 to state law claims. The federal claim had been dismissed,  
7 which suggests to the Court that the *Johnson* opinion doesn't  
8 hinge on the existence of a federal claim, it just stands for  
9 the proposition that class actions under Federal Rule 23 in  
10 federal court do not permit the award of incentive fees.

11 Have you read the *In re Equifax* case and, if so, how do  
12 you differentiate that case only involving state law claims and  
13 our case only involving state law claims and the award of  
14 incentive awards?

15 MS. MENDENHALL: Sure. So, Your Honor, I, candidly, do  
16 not know the interworkings of that case, certainly as well as  
17 you do. If I have looked at that case, I just don't remember  
18 it, standing here today, and I apologize.

19 What I will say is the case that we do cite, shifting  
20 it into an Erie decision, and with it being state law claims,  
21 shifting -- the use of being able to apply the Erie doctrine and  
22 allowing for Alabama state law to apply would show that Alabama  
23 does allow for these types of service awards. So, Your Honor,  
24 that's how I would say that these plaintiffs are entitled to  
25 the --



1           THE COURT: I understand that argument, except the  
2 Eleventh Circuit has said very broadly, there are no incentive  
3 awards allowed in the circuit. That has been read by other  
4 district courts to only apply in cases where there is a federal  
5 question, except we have *In re Equifax* where the Court applied  
6 that same rule when the federal claim had been dismissed,  
7 saying, we're bound by the *Johnson* opinion. There are no  
8 incentive awards in this circuit. Nobody has analyzed this to  
9 only apply in cases involving a federal cause of action. In  
10 fact, it has been applied very basically and very clearly,  
11 without much elaboration by the circuit, citing to *Johnson*, this  
12 is not permitted.

13           So I've got cases that are saying different things. We  
14 actually have an intracircuit split because at least one  
15 district court has said *Johnson* doesn't permit this. It wasn't  
16 a holding, it was more of an aside, because there the party  
17 withdrew the request for incentive fees after the *Johnson*  
18 opinion came out and said these fees are not permitted in the  
19 Eleventh Circuit, and the Court agreed.

20           My reading is I don't have any case law from the  
21 Eleventh Circuit that says anything other than incentive fees  
22 are not permitted. I don't see there's been any specificity  
23 that it's only not permitted in cases where there's a federal  
24 question.

25           MS. MENDENHALL: Yes, Your Honor. Can I ask for two

1 minutes to talk with my cocounsel?

2 THE COURT: Sure.

3 (Brief pause in the proceedings.)

4 MS. MENDENHALL: Thank you.

5 MR. FARRIS: Your Honor, I'm not familiar with this  
6 case. Was this case pending more than a year before the --  
7 diversity destroyed?

8 THE COURT: *In re Equifax* is from 2021. It came out  
9 after *Johnson*. This one came back, I believe, in an MDL.

10 MR. FARRIS: I apologize.

11 THE COURT: It had been an MDL, if I remember  
12 correctly. Let me see. In that case, over 300 class actions  
13 against Equifax were filed across the nation, all of which came  
14 to be consolidated and transferred by the Judicial Panel on  
15 Multidistrict Litigation to then Chief Judge Thomas W. Thrash in  
16 the Northern District of Georgia.

17 Move forward. Equifax filed a motion to dismiss the  
18 complaint in its entirety which the District Court granted in  
19 part and denied in part. The District Court dismissed the Fair  
20 Credit Reporting Act claims, the Georgia Fair Business Practices  
21 Act claims, as well as some state statutory claims. However, it  
22 allowed the negligence and negligence per se claims under  
23 Georgia law as well as other state statutory claims to go  
24 forward.

25 MR. FARRIS: Strictly state law claims.

1 THE COURT: Only state law claims.

2 MR. FARRIS: Your Honor, I apologize for me not knowing  
3 that case today. And in light of what the Court is telling us,  
4 I think we probably will withdraw the service award claims.

5 THE COURT: All right.

6 MR. FARRIS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 Let's move to the attorney fee and cost issue. I've  
9 read your submissions on attorneys' fees. Do you have anything  
10 you would like or need to add to that?

11 MS. MENDENHALL: No, Your Honor. In fact, the one  
12 thing I was going to draw your attention to is now a moot issue.  
13 I had made a calculation error as to the service awards, but now  
14 that those are withdrawn, then, no, there is nothing in addition  
15 to what we have stated out in our motion. I'm happy to make the  
16 record, but it will be in large part duplicative of what we do  
17 have in that filing.

18 THE COURT: I just have a question, really, of  
19 interest. I looked at your account quick report of your fees.

20 MS. MENDENHALL: Yes, Your Honor. Yes.

21 THE COURT: The largest amount is -- it looks like it's  
22 a consulting fee, and it reads -- and just for the record, it's  
23 document 100-3, page 2 of 3 at the bottom. It's an amount paid  
24 to Paragon Polymer Consulting, and it reads, Bow PEX statement  
25 payoff, in excess of \$240,000. Is that consulting fees?

1 MS. MENDENHALL: Yes, Your Honor. That relates to one  
2 of our experts.

3 THE COURT: Okay. So when it says statement payoff,  
4 it means you received a statement for consulting fees, and you  
5 paid that amount?

6 MS. MENDENHALL: Correct.

7 THE COURT: All right.

8 MS. MENDENHALL: Your Honor, if I may.

9 THE COURT: Go ahead.

10 MS. MENDENHALL: I did also note that I had not  
11 submitted a Word version of a proposed order for the motion for  
12 fees, and we are happy to submit that at your request.

13 THE COURT: All right. If you would like to submit  
14 one, you certainly can. You can send it to my proposed order  
15 box in the same manner that you have probably provided other  
16 proposed orders, and we will certainly use that as a reference  
17 for my written order -- my ultimate written order.

18 MS. MENDENHALL: Yes, Your Honor.

19 THE COURT: All right. Again, your briefing on the  
20 attorney's fees was comprehensive and is unopposed. Is that  
21 still the case?

22 MS. CROES: Yes, Your Honor. That remains the case.

23 THE COURT: All right. So do you have anything else to  
24 speak to on the attorneys' fees and costs?

25 MS. MENDENHALL: No, Your Honor.

1 THE COURT: How long would you anticipate the Court  
2 would retain jurisdiction over this case? It appears as though  
3 the claim period would remain open until December 31st, 2028.  
4 What happens if the fund is depleted before that?

5 MS. MENDENHALL: Well, Your Honor, we certainly do not  
6 anticipate the fund being depleted before the close of the claim  
7 period. As far as your jurisdiction, we would like you to  
8 retain jurisdiction through the expiration of the claim period,  
9 just to ensure that there are no lingering issues. I'm sure  
10 that you saw in our motion that we do have a special master and,  
11 in fact, a backup special master, just given Mr. Hart's time and  
12 time constraints. We also have an independent engineering  
13 consultant. So while we request that you retain jurisdiction,  
14 we anticipate and are certainly hopeful that there would be  
15 little for Your Honor to deal with throughout the time that the  
16 order on this class is entered through the expiration of that  
17 period.

18 THE COURT: All right. You represent that there were  
19 multiple invalid opt outs that were submitted. Have those  
20 individuals been told that their opt outs were not effective?

21 MS. MENDENHALL: We have notified their counsel, is my  
22 understanding. In fact, their counsel had reached out, I  
23 believe last week, to Bow's counsel to get a final list. That  
24 has been now filed and available on PACER, and we have not had a  
25 response to date based on that. As far as have we contacted --

1 either party have contacted them directly, no, we have not done  
2 that. And if Your Honor -- if that would be your preference,  
3 for us as class counsel to reach out and let them know, then  
4 that is something that we will certainly do.

5 THE COURT: Well, it appears we have eight exclusion  
6 forms for 13 individuals and seven structures that were  
7 determined to be invalid.

8 MS. MENDENHALL: Yes, Your Honor.

9 THE COURT: I guess my thought was there have been no  
10 objections, but I wanted to know if those individuals had been  
11 told that their opt outs were not accepted.

12 MS. MENDENHALL: Again, we have not informed them  
13 directly. Our office has not reached out to them directly.  
14 They are represented by alternate counsel, and those alternate  
15 counsel have not reached out to us to object to us making that  
16 determination in conjunction with Bow's counsel and with Angeion  
17 that those opt outs are invalid. But we're happy to --

18 THE COURT: I guess I'm asking, do they know that  
19 they've been deemed invalid?

20 MS. MENDENHALL: Their counsel should.

21 MS. CROES: Your Honor, I can speak to that as well.  
22 The lawyers that we believe represent the individuals whose  
23 requests for exclusion have been deemed invalid did contact me  
24 several days ago, sometime last week, and asked if we were going  
25 to present the Court with a final tally of the opt outs that

1 Angeion had deemed valid versus invalid. We responded saying  
2 that we were working through a number of them that were  
3 referenced in class counsel's motion for final approval. We did  
4 continue to do that. We reviewed the forms and all of the  
5 submissions together with class counsel and with Angeion as  
6 well. Angeion gave us its final determination as to the list of  
7 opt outs it had deemed invalid, and those were provided in the  
8 supplemental declaration to Your Honor. Class counsel agrees  
9 with Angeion's determination. We agree with Angeion's  
10 determination after an extensive review.

11 After the filing, I'm fairly confident that the lawyers  
12 who reached out to me and who do represent those individuals  
13 have received a copy of the filing. They have given every  
14 indication throughout this case that they are monitoring this  
15 case, but they have not given me formal affirmation. If Your  
16 Honor would like, we can send a copy of the declaration to them  
17 so that they will have notice to that. Outside of that, I think  
18 we were all hesitant to reach out directly to those individuals  
19 because they are independently represented.

20 THE COURT: All right. Knowing that their attorneys  
21 are aware is satisfactory.

22 MS. MENDENHALL: Yes.

23 THE COURT: All right. Anything else?

24 MS. MENDENHALL: I don't think so, Your Honor.

25 MR. FARRIS: No, Your Honor.

1 THE COURT: All right. Anything from the defendants?

2 MS. CROES: No, Your Honor.

3 THE COURT: All right. I have reviewed all of your  
4 submissions, and I am inclined to grant the motion to certify  
5 the class and to approve the settlement and to approve the  
6 request for attorneys' fees. I'll get an order out as quickly  
7 as possible. I appreciate your time. Thank you very much.  
8 We're adjourned.

9 (Proceedings concluded at 2:12 p.m.)

10 \* \* \* \* \*

11 COURT REPORTER'S CERTIFICATE

12 I certify that the foregoing is a correct transcript  
13 from the record of the proceedings in the above-entitled matter.

14 This 6th day of August, 2024.

15  
16 /s/ Patricia G. Starkie  
17 Registered Diplomat Reporter  
18 Certified Realtime Reporter  
19 Official Court Reporter  
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